In the High Court of Judicature at Madras

Dated: 08/09/2003

Coram

The Hon'ble Mr. Justice R. Jayasimha Babu
and
The Hon'ble Mr. Justice C. Nagappan

Writ Appeal No.1006 of 1999

1. The Manager,
R.C. Schools,
Salem Social
Services Society,
Alagapuram,
Salem.

2. The Headmaster,
Little Flower Higher
Secondary School,
Salem - 7. ... Appellants

-Vs-

1. G. Vincent Paulraj,
85-C/2, Narayana Street,
Peramanur,
Salem 7.

2. The District Educational
Officer,
Salem. ... Respondents

Appeal under Section 15 of the Letters Patent appeal against the order of a learned single Judge of this Court dated 28.6.1999 made in W.P. No: 10145 of 1998.

!For appellants :: Mr. Isaac Mohanlal

^For 1st respondent :: Mr. C. Selvaraju

For 2nd respondent :: Mrs.N.G. Kalaiselvi,
Special Govt. Pleader

:J U D G M E N T

(Judgment of the Court was
delivered by R. Jayasimha Babu, J.)

The appellant school is a minority school run by the Salem Diocese Society. It run 43 schools all of which have been recognised under the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act 1973. A common seniority list is maintained of all the teachers working in all these schools. The society has been effecting transfers of its teachers from one school to another, such transfers being authorised under the Rules of the society which rules are made part of the service conditions of the employees by the undertaking obtained from the teachers in their service registers that they will be bound by the rules of the society.
2. The 1st respondent is one of the teachers employed in the school run by the appellant at Salem. He along with many others, said to number about fifty, were transferred in the year 1998. Though all the others took up their places at the schools to which they were posted, the 1st respondent resisted the transfer and filed a writ petition in this Court which has been allowed by placing reliance on the judgment of the Full Bench of this Court in the case of The Correspondent, Malenkara Syrian Catholic School, Marthandam, Kanyakumari District. vs. J. Robinson Jacob and others [1998 (3) M.L.J. 595].

3. In that case, the Full Bench examined the scheme of the Act and the Rules and held regarding transfer that,
" The question whether it is an incident of service has to be determined in the facts and circumstances of each and every case and is a question of fact."
The Bench also held that,
" Transfer cannot be termed absolutely as an incident of service when it is not specifically provided for nor prohibited under the rules and regulations or conditions of service applicable to the teachers and others in a private school. It is only in particular circumstances in the facts and circumstances of each case it can be inferred to be an incident of service."
On the facts of the case before the Full Bench, it was concluded that transfer was not an incident of service as the schools in that case had been treated as separate units and separate seniority list were maintained in each individual school and admittedly there was no common seniority list.

4. The ratio of the decision of the Full Bench, therefore, is that transfer is not prohibited by the provisions of the Act; that if in a given case it is shown that transfer is a condition of service having regard to the terms of the contract between the parties, then transfer is permissible subject to the transferee not being deprived of the benefits of his service prior to such transfer.

5. The facts and circumstance of each case have to be examined before a decision can be rendered as to whether transfer is or is not permissible. Factors relevant for determining that question would be whether transfer is provided for in the contract of service, as to whether a common seniority list is maintained and as to whether, by reason of the transfer, the transferred employee is deprived of any of the benefit to which he is otherwise entitled prior to the transfer.

6. Section 20 of the Act which is in Chapater V titled "Terms and conditions of service of teachers and other persons employed in Private Schools" deals with appointment of teachers and other employees in private schools. Section 19 empowers the Government to make rules regulating the number, qualifications and conditions of service of the teachers and other persons employed in any private school. Rules having been made by the Government in this regard, qualifications and conditions of service of teachers and others are dealt with in Rule 15. It requires the school committee of every private school to enter into an agreement in Form VII(A) or VII(B). Rule 15 (4) deals with promotions. Rule 15 (4) (ii) (ii) (c) refers to Corporate Body running more than one school that, in respect of Corporate Body running more than one school, the schools under that body shall be treated as one unit for the purpose of the Rule. Thus, the rule made under the statute clearly recognises the possibility of several schools being run by one single legal entity and promotions being made from a common pool of teachers serving in all such schools whenever vacancies arise in any one of those schools run by that legal entity. The policy of the Act therefore is not to prohibit more than one school being run by the same corporate body. The fact that statutory agreement does not specifically refer to transfer would not come in the way of the concerned parties agreeing to such a condition or agreeing to continue to be bound by such a condition in a contract entered prior to coming into force of this Act. As to whether such a condition providing transfer in fact formed part of the contract is a question of fact.

7. As already noticed in the service register of the writ petitioner it is clearly stated that the petitioner will be governed by the rules of the society and one of the rules of the society is a provision for transfer, the relevant part of which reads thus,

"

Transfers

01. Transfers shall normally be made only at the beginning of the school year. But when circumstances demand, they shall be made even in the academic year.

02. Teachers appointed in the diocesan schools primary, Middle, High, Higher Secondary are liable to be transferred within the limits of the diocese from one type of school to another.

03. All transfers are done by the diocesan Education council.

Note : Posts of additional headmasters are sanctioned only to the present incumbents in particular middle schools. The post or the persons thus designated cannot be transferred to their schools. Once the present incumbents retire the posts elapse. "

The service register sets out that,

" The teacher shall conform to all the rules and regulations of the school for the time being in force therein and obey all the lawful orders and directions as he shall receive from the school authority from time to time."

The rules and regulations referred to therein includes a provision for transfer.

8. In addition, among the entries made in respect of the writ petitioner in his service register, under the column heading "special condition if any as to the nature of appointment", it is mentioned " three months notice of either side and liable to transfer under the same

management". The petitioner thus had been made aware even when he joined the school that his service was a transferable one among the schools run by the same management. He had accepted that condition and had served in the school subject to that condition even as all others who had joined the school run by the same diocese had. The petitioner had, on an earlier occasion, been offered a promotion but on transfer. He chose to forego that promotion. However, the place to which the writ petitioner had been transferred was filled by the transfer of another employee who had taken charge. The petitioner declined the promotion and he has now been transferred to another place.

9. This transfer does not prejudicially affect him as his seniority is preserved so also his emoluments. The appellant has placed before the Court the seniority list of its teaching staff in all the schools. It is a common seniority list which sets out the name of the teacher and their present place of working. The list is arranged chronologically with a person who joined earlier being placed above one who joined later. The list contains 367 names and sets out their ranking. The ranking of the 1st respondent Vincent Paulraj in that list is 107. It is submitted for the appellant that, that seniority of his is in no way effected by reason of his transfer and that his right to be considered on the basis of the seniority is fully protected as also his emoluments. It is also submitted by counsel for the appellant at the bar that all others who had been transferred about the time the petitioner was transferred have accepted their transfer and have taken up their posting without any demur whatsoever and the transfer is a continuing feature in the service of the teachers in the school run by the appellant.

10. The impugned order of transfer therefore did not require any interference. The appeal is allowed and the writ petition shall stand dismissed.

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Index : Yes
Website : Yes

To,

The Educational Officer,
Salem.